IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 336 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATHA NAGABHAI KARMAUR AHER - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR NIRAV C THAKKAR for Appellant
MS DS PANDIT, ADDL.PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/10/2007

ORAL JUDGMENT

1. This appeal is preferred by the appellant, original accused of Sessions Case no. 122 of 1998, decided by the learned Additional Sessions

Judge, Jamnagar, holding the appellant guilty of the charge of offence punishable under Section 307 of I.P.C. Legality and validity of the order of conviction and sentence is assailed on various grounds mentioned in the memo of appeal. Mr. N.C. Thakkar, learned counsel appearing for the appellant-convict has also taken me through all these grounds.

2. By the order under challenge, the learned trial Judge sentenced the accused to undergo rigorous imprisonment for 7 years and imposed fine of Rs. 15,000/- and in default of payment of fine, imposed punishment of 3 months' imprisonment. According to Mr. Thakkar, till date, the appellant-convict has not paid the amount of fine imposed by the learned trial Judge, but he has instructions that the appellant-convict is going to pay amount of fine.

3. It is submitted by Mr. Thakkar that the order of conviction recorded by the learned trial Judge is based on erroneous appreciation of evidence. It is submitted that material contradictions emerging from the evidence of the injured

witness and other witnesses examined during the trial, who are alleged to be the witnesses to the incident, have not been considered in their legal and proper perspective. It is submitted that theory of false implication placed by the appellant-convict before the learned trial Judge has not been correctly appreciated. That inimical terms that were existing between the appellant-convict and the complainant side were required to be considered. It is also submitted that the appellant-accused ought not to have been held guilty at least of the charge of offence punishable under Section 307 of I.P.C., and that the sentence imposed by the learned trial Judge is also very harsh, because, as such the quarrel had cropped up suddenly and there was no motive for the accused to kill the injured witness. In short, it is submitted by Mr. Thakkar that the order of conviction and sentence is not sustainable in the eye of law.

4. On the other hand, Ms. D.S. Pandit, learned Addl. Public Prosecutor has submitted that the finding recorded by the learned trial Judge is

absolutely legal and there was no reason for the trial Judge to discard the evidence of the injured witness examined. For the sake of argument, even if it is accepted that the terms between the accused and the complainant's side were inimical, such inimical terms is a double edged weapon and the say of the complainant gets sufficient corroboration from the medical evidence led by the prosecution and the presence of the accused at the spot of the incident was not disputed before the trial Judge and therefore, it would not be correct to say that the finding is either perverse or based on improper appreciation of evidence. Ms. Pandit has taken me through the nature of injuries that were found on the body of the injured and the story unfolded by the complainant which is found natural and the FIR which was also lodged practically in couple of hours and submitted that there was no reason for the trial Judge to view this FIR as contemplated document after deliberations with a view to implicate the accused in serious offence. It is submitted

that though the relations between the accused and the complainant's side were inimical, the complainant had not attempted to implicate maximum number of persons and considering the weapon used and the part selected for giving blow amply established that the attempt made by the accused was to commit murder of the injured witness and therefore, the conviction recorded by the learned trial Judge should be upheld.

5. To appreciate the above rival contentions, firstly it would be beneficial to state the case of the prosecution in brief which is reflected in the Charge framed by the learned trial Judge. Initially when the Charge was framed, as there was some confusion in the Charge as to the reference to the part of the body on which knife blow was given, necessary corrections were made in the Charge by passing a speaking order by the learned Presiding Judge vide order dated 28th August, 2003 and in the background of the said amended Charge, the appellant-accused was given an opportunity to recall the witnesses and to put them further questions if he so desired.

In the Charge, initially it was stated that blow was given on the leg. Thereafter, it was mentioned as lower part of abdomen, popularly known in vernacular Gujarati as “Pedu”. There is one another Gujarati word “Pedhu” which word is used as part of mouth which holds the teeth, that is, jaw. In reality, blow was given on the lower part of the abdomen and therefore, Charge was corrected accordingly and the word “Pag” was substituted by the word “Pedu” [pet], that is, lower abdomen. According to the prosecution, the incident had occurred on 28th July, 1998 at about 10.00 P.M. The victim and the accused were watching a T.V. Serial, namely “Hanuman” at village Govana, Taluka-Lalpur, District:Jamnagar. Two days prior to the incident, the accused had demanded Rs. 200/- from the injured and the injured, instead of complying with the demand of the accused had informed his father about the demand made by the accused. It is alleged that the father of the injured, in turn, told this fact to the father of the accused. It is the say of the

prosecution that the father of the accused, in turn, had told the accused that why and how he had demanded Rs. 200/- from the injured victim. Therefore, on the date of the incident, the accused picked up a quarrel with the victim asking him that why instead of giving Rs.200/-, he dared to inform his father about the demand made by him. The quarrel started on the ground that one was obstructing other in viewing the serial that was going on in a shop of the village. At that time, the accused gave a knife blow in the lower abdomen of the injured with great force, as a result of which, the lower intestine had come out of the abdomen. Thereafter, the injured was shifted to the hospital and a complaint was also filed. After initial treatment at Lalpur, that is, Taluka Headquarter, the injured was shifted to a bigger hospital, known as Irvin Hospital. According to prosecution, the act of assaulting the victim with knife was an attempt to commit murder of the victim and therefore, the accused was charge sheeted accordingly.

6. When Mr. Thakkar, learned counsel for the appellant made his submissions on merits, this Court pointed out certain facts stated by the complainant and the injured Ranmal Mera. There are no material inconsistencies in the evidence of these two witnesses and when the Court has placed reliance mainly on the evidence of the injured witness, why conviction should be held bad or illegal. On careful reading of the evidence of the injured Ranmal Mera – PW 3 Exh.17 and the relevant corroborative part of the FIR recorded by the police immediately after the incident, Mr. Thakkar, on the strength of written instructions received by him has submitted that the accused may not pres for the appeal against the order of conviction. By reading the evidence of Ramesh Vachhani- PW 2, who treated the injured at Lalpur Community Health Centre and the evidence of Dr.Rakhelchand G. Datta-PW 14, Exh.40, it was possible for the learned trial Judge to say that the medical evidence corroborates oral version of the injured-PW 3 Ranmal Mera and therefore, the

appellant is not interested in assailing the order of conviction. It is submitted by Mr. Thakkar that this Court should appreciate the alternative submission made by him and should hold that the conviction imposed by the learned trial Judge is harsh and the quantum of punishment normally should be decided keeping in mind the totality of the event. According to Mr. Thakkar, this was a case of single blow on the abdomen and as such, there is no evidence on record to show that intestine was cut to pieces because of the blow given. The story of payment of Rs.200/- placed by the complainant ought not to have been given serious weightage, because, as there were inimical terms between the complainant and the accused, there was no reason for the accused to make payment of Rs. 200/-. True it is that prosecution is not supposed to prove the motive, but when it emerges that when number of persons were watching T.V. Serial “Jai Hanuman” and one of them had obstructed the other as the terms were inimical between them, suddenly a quarrel must have taken place, and

therefore, in cases of sudden quarrel where one vital blow is found to have been given, the Courts are not holding the accused guilty of the charge of offence punishable under Section 302 of I.P.C. For the sake of argument, even if it is presumed that the victim would have died on account of the blow given, perhaps the Court would have held the accused guilty of the charge of offene punishable under Section 304 Part-II, that is, culpable homicide not amounting to murder, instead of offence punishable under Section 302 of I.P.C. In such situation, the learned trial Judge ought to have held the accused guilty of the charge of offence punishable under Section 308 of I.P.C. and not under Section 307 of I.P.C. However, in the background of inimical terms that have been brought on record, even during the course of cross-examination and the fact that for no good reason, knife blow was given, then, the age of the accused also could have been considered by the learned trial Judge while imposing rigorous imprisonment for 7 years. According to Mr.

Thakkar, in such situation, substantive sentence of more than 3 years can be said to be harsh punishment. The appellant-accused is in prison for about 4 years and therefore, this Court should reduce the period of punishment to the period already undergone keeping the obligation to pay the amount of fine as it is. If the accused failed in paying the amount of fine, then, he may be asked to undergo the imprisonment imposed as punishment in default of payment of fine, irrespective of remissions for which the accused may be entitled.

7. Learned APP Ms. Pandit has fairly submitted that considering the age of the accused and the background of facts that are emerging from the record in which the incident had taken shape and the fact that only one blow was given, substantive punishment can be reduced to the period already undergone keeping the sentence of fine imposed by the learned trial Judge as it is. The accused should either pay the amount of fine or should undergo additional imprisonment, that is, imprisonment imposed in default of

payment of fine.

8. Considering the totality of the submissions made before the Court and the fact that Mr. Thakkar has not pressed the appeal against the order of conviction recorded by the learned trial Judge, the following final order is passed.

9. The appeal is partly allowed. The order of conviction and sentence recorded by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No. 122 of 1998 for the charge of offence punishable under Section 307 of I.P.C. is hereby upheld. However, the period of substantive sentence imposed by the learned trial Judge is hereby modified and the period of substantive sentence is reduced to the period already undergone by the accused, without making alterations in the sentence of fine imposed as well as in default punishment prescribed by the learned trial Judge in the event of failure in payment of fine. It is clarified that irrespective of remissions earned by the accused, if the accused fails to pay the amount of fine, then, he shall undergo the punishment

imposed in default of payment of fine by the trial Judge. It is ordered that if amount of fine is paid, then, the accused may be set at liberty forthwith, provided he is not otherwise required by the jail authorities for any other purpose. Order and direction accordingly.

[C.K. BUCH, J.]

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